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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1974

No. 74-966

AMERICAN FOREIGN STEAMSHIP COMPANY, a Corporation,
Petitioner,

vs.

LILLIAN M. MATISE, as personal representative of
GRANVILLE C. MATISE, deceased, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

Petitioner, American Foreign Steamship Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on September 27, 1974.

OPINIONS BELOW

The initial opinion of the United States District Court for the Northern District of California, unreported, appears in the Appendix at p. i. The initial opinion of the United States Court of Appeals for the Ninth Circuit is reported at 488 F.2d 471, and appears in the Appendix hereto at p. iv. The judgment of the United States District Court for the Northern District of California without opinion appears in the Appendix at p. xv. The order and judgment of the United States Court of Appeals for the Ninth Circuit, unreported and without opinion, appear in the Appendix at p. xvii. The order denying the petition for rehearing is included in the Appendix at p. xviii.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on September 27, 1974. A timely petition for rehearing en banc was denied on November 7, 1974, and this petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether it is error to impose the double-wage penalties under 46 U.S.C. §596 without a hearing on the merits as to the existence of "sufficient cause".

2. Whether in the absence of a finding of arbitrary, unreasonable and willful conduct by the shipowner the

double-wage penalties under 46 U.S.C. §596 can be imposed.

3. Whether the judiciary has discretion in assessing the amount of a penalty under 46 U.S.C. §596.

STATUTORY PROVISIONS INVOLVED

46 U.S.C., §596 TIME FOR PAYMENT:

"The Master or Owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after termination of the agreement under which he was shipped, or at the time said seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every Master or Owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the Court; but this section shall not apply to Masters or Owners of any vessel, the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts."

STATEMENT OF THE CASE

This suit was instituted by Respondent 's decedent (hereinafter Respondent) in the United States District Court for the Northern District of California against Petitioner seeking (a) recovery of Five Hundred and Ten Dollars ($510.00) alleged to have been illegally deducted by Petitioner from his earned wages, and (b) imposition and recovery of the double-wage penalty allowed to seamen for wages withheld without sufficient cause under 46 U.S.C. §596. The basic facts, which are not in dispute, are as follows:

The Respondent was employed as an oiler for a foreign voyage aboard the SS AMERICAN HAWK, owned by Petitioner, and was discharged for good cause on March 19, 1969 in Saigon, South Vietnam, in the presence of the vessel's Master, the United States Vice Consul and two United Coast Guard officials by reason of Respondent's willful misconduct and neglect of duty. The vessel's Master was advised by the Vice Consul and Coast Guard officials that he was not required to pay the cost of Respondent's return transportation to the United States since his discharge was for good cause. Currency control regulations then prevailing in the Republic of South Vietnam prohibited American Merchant seamen from carrying United States currency ashore and further required that the vessel's safe containing currency be sealed. Thus, the Respondent could not be paid his earned wages and put ashore. Furthermore, an airline ticket for return transportation to the United States from Saigon could at that time only be purchased with United States currency. With the approval of the Vice Consul, the vessel's Master was granted permission by Customs authorities of the Republic of South Vietnam to break the seal on the vessel's safe and withdraw the precise amount necessary to purchase an airline ticket to the United States, Five Hundred and Ten Dollars ($510.00). With the approval of the Vice Consul, the two Coast Guard officials, and the Respondent, the vessel's Master purchased an airline ticket on behalf of Respondent. A wage voucher was provided by the Master to the Respondent which deducted from the amount of Respondent's earned wages the cost of the airline ticket.

On December 15, 1971 following trial to the Court, the United States District Court for the Northern District of California entered judgment in favor of Petitioner. As is apparent from the District Court's Opinion, the Respondent was found to have received all funds to which he was entitled and the trial court concluded that there was no illegal withholding or illegal deduction from Respondent's earned wages. No ruling was made on the question of sufficient cause or assessment of the double-wage penalties.

On appeal by Respondent, the United States Court of Appeals for the Ninth Circuit reversed the District Court judgment in favor of Petitioner. The Court of Appeals held, largely on the basis of *Isbrandtsen Co. v. Johnson,* 343 U.S. 779 (1952), that there had been an illegal deduction from Respondent's earned wages in the amount of Five Hundred and Ten Dollars ($510.00). The Court of Appeals went on in its Opinion to consider in part the question of sufficient cause, although never touched upon by the trial court, and held that Petitioner could

not rely upon the Respondent's execution of a mutual release nor on the applicable law which did not require Petitioner to bear the expense of Respondent's return transportation to the United States in claiming the existence of sufficient cause. The Court of Appeals however did not expressly hold that the deduction was without sufficient cause and that Petitioner was liable for a double-wage penalty.

On remand to the District Court and following briefing and oral argument, judgment was entered in favor of Respondent in the sum of Thirty-Five Thousand, Three Hundred Six Dollars and Twenty Seven Cents ($35,306.27) which amount included an award of the double-wage penalty for the period commencing March 24, 1969 through and including December 15, 1971, the date upon which judgment was initially entered in favor of Respondent.

Intervening the initial opinion of the Court of Appeals and the subsequent entry of judgment by the District Court in favor of Respondent, the Court of Appeals below rendered its decision in *Escobar v. SS Washington Trader,* officially reported at 503 F.2d 271 (9th Cir. 1974), and appearing in the Appendix at p. xix. The Petitioner filed timely notice of appeal from the Trial Court's entry of judgment in favor of Respondent, which following Respondent's motion for an expedited decision, opposed by Petitioner, was affirmed by the Court of Appeals. Although not citing its opinion in *Escobar, supra,* the affirmance by the Court of Appeals as to the amount of the penalty was in accord with its decision in that case. The Petitioner's request for a rehearing *en banc,* timely

filed on October 11, 1974, was denied by the Court of Appeals.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE COURT OF APPEALS BELOW IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The decisions of this Court in *Isbrandtsen Co. v. Johnson,* 343 U.S. 779 (1952); *Collie v. Fergusson,* 281 U.S. 55 (1930), and *McCrea v. United States,* 294 U.S. 23 (1936) hold, in part, that the penalty provision of 46 U.S.C. §596 is applicable and liability for double wages accrues, if at all, only upon a finding that a refusal or neglect to pay was without sufficient cause. In *Collie v. Fergusson,* this Court concluded that a finding as to the absence of sufficient cause was a condition prerequisite to the accrual of the penalty. 281 U.S. at p. 55. In *McCrea v. United States,* this Court expressly held that liability for double wages necessarily requires a determination of whether or not the failure to pay wages within the prescribed period was without sufficient cause. 294 U.S. at p. 29. In *Isbrandtsen Co. v. Johnson,* this Court affirmed the lower Court's disallowance of the seaman's claim for double wages, citing in support thereof its earlier decision in *Collie v. Fergusson.* The Court of Appeals for the Third Circuit in *Isbrandtsen Co. v. Johnson,* held that the mere existence of an unlawful withholding does not, in and of itself, establish the absence of sufficient cause for that withholding. 190 F.2d at p. 993.

The above-mentioned decisions of this Court clearly establishing that the imposition of double-wage penalties

requires a legal-factual finding as to the absence of sufficient cause for the withholding or deduction have been followed by numerous lower Court decisions. See *Chambers v. Moore-McCormack Lines,* 182 F.2d 747, 749 (3d Cir., 1950) and *McConville v. Florida Towing Corp.,* 321 F.2d 162, 168 (5th Cir., 1963). Under the decision of the Court of Appeals below, the mere finding of an illegal deduction or unlawful withholding from the seaman's earned wages would result in the automatic imposition of the double-wage penalty. It is patently clear that the District Court did not consider the legal-factual question of sufficient cause. The Court of Appeals below, after correcting their misapprehension as to the District Court's findings by amending their opinion (Appendix, p. iv, to delete the earlier error citing the District Court as finding an absence of sufficient cause even had the deduction been unlawful, perpetuated their misunderstanding of the trial court's findings, and allowed the remainder of their opinion to stand in which it ruled that the Petitioner could not rely on Respondent's execution of a mutual release nor the general maritime law which did not obligate Petitioner to bear the expense of Respondent's return transportation, in claiming the existence of sufficient cause. Thusly, neither the District Court nor the Court of Appeals made the required legal-factual determination as to the existence or absence of sufficient cause.

As earlier declared by this Court, the phrase "without sufficient cause" means conduct which is in some sense arbitrary, unreasonable or willful and liability for double wages will not be incurred where the refusal or neglect to pay was in some reasonable degree morally justified.

Collie v. Fergusson, 281 U.S. 51 (1930). The judgment of the Court of Appeals below includes an award of double wages under Section 596 without any finding of arbitrary or unreasonable conduct by the petitioner and without any consideration of the equities supporting petitioner's conduct. This is contrary to the standards of liability for Section 596 penalties established by this Court in earlier decisions.

The conflict between the decision of the Court of Appeals below and the earlier decisions of this Court justifies the grant of certiorari to review the judgment below.

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2. THE DECISION OF THE COURT OF APPEALS BELOW IS IN DIRECT CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEALS ON A SUBSTANTIAL QUESTION OF FEDERAL MARITIME LAW.

The decision below which applies an unalterable mathematical computation of penalties which does not take into consideration the degree, if any, that the shipowner's actions may or may not have been arbitrary, willful or unreasonable and which denies any discretion to the trial court to assess the penalties provided for in 46 U.S.C. §596 in light of the equities of the case is in direct conflict with the decisions of the Court of Appeals for the Fourth Circuit in *Southern Cross SS Co. v. Firipis,* 285 F.2d 651 (1960); *Prindes v. The SS African Pilgrim,* 266 F.2d 125 (1959), and *Mystic SS Co. v. Stromland,* 21 F.2d 607 (1927); the Court of Appeals for the First Circuit in *Mavromatis v. United Greek Shipowners Corp.,* 179 F.2d 310 (1950); the Court of Appeals for the

Fifth Circuit in *Caribbean Federation Lines v. Dahl,* 315 F.2d 370 (1973) and the Court of Appeals for the Second Circuit in *Forster v. Oro Navigation Co.,* 228 F.2d 319 (1955).

In each of the above cited cases the Courts of Appeals held that in assessing the amount of the Section 596 penalty the judiciary was vested with an inherent discretion to adjust or mitigate the amount of the penalty to conform to the equities of the particular case. By exercising such discretion, the imposition of an otherwise unjustifiably harsh result was avoided or an unconscionable taking by the seaman was prevented. Authority to consider the equities of the particular case in assessing the amount of a Section 596 penalty was found by these Courts of Appeals in this Court's ruling in *Pacific Mail S.S. Co. v. Schmidt,* 241 U.S. 245 (1916) and at times has appeared to be claimed as a rule of law which prevented a legislative policy intended to preclude overreaching of the seaman from becoming a sword to achieve overreaching by the seaman.

The decision of the Court of Appeals below, following its earlier decision in *Escobar,* clearly evidences an adoption of the views of the Court of Appeals for the Third Circuit in *Swain v. Isthmian Lines, Inc.,* 360 F.2d 81 (3rd Cir. 1966) wherein it was held that the language of Section 596 presented an unequivocal and mandatory command to the judiciary to impose the full double-wage penalty without adjustment and without regard to the equities of the case. In *Swain,* the Court of Appeals for the Third Circuit concluded that those decisions which upheld the principle of discretion to adjust or

mitigate the penalty were erroneous, and that consideration of the equities of the case and resultant exercise of discretion by the Court was proper only in determining whether or not the withholding was "without sufficient cause" thereby justifying the imposition of penalties. Parenthetically, Petitioner respectfully submits that if the Court of Appeals below intended to follow the precise reasoning of the Court of Appeals for the Third Circuit in *Swain, supra,* there should have been a consideration of the equities in the instant case in determining whether the double-wage penalty was in order at all.

The direct conflict between the decision below and decisions of the other Courts of Appeals on the same question justifies the grant of certiorari to review the judgment below.

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3. THE DECISION BELOW PRESENTS AN IMPORTANT STATUTORY ISSUE OF FIRST IMPRESSION

The precise question whether a Court has discretion to adjust the amount of a double-wage penalty under Section 596 has never been decided by this Court. The question is not merely academic and is a matter of grave concern. An ultimate determination on the question of the legality of a disputed withholding or deduction from a seaman's earned wages adverse to a shipowner could, under the decision below, result in the mechanistic imposition of a penalty in a sum grossly disproportionate to the earned wages in dispute. The conflicting interpretations of 46 U.S.C. §596 have left confused the intent and meaning of that statute. Under the present

state of the law, the amount of a Section 596 penalty could depend upon the forum chosen by the seaman. The precise question of how to measure the statutory penalty once an absence of sufficient cause is properly determined is a novel and substantial point of law for this Court, and justifies the grant of certiorari.

CONCLUSION

For these reasons, it is respectfully submitted that a Writ of Certiorari should issue to review the judgment of the Court of Appeals for the Ninth Circuit.

Dated, February 3, 1975.

Respectfully submitted,

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JOHN A. FLYNN
FRANCIS L. TETREAULT
Counsel for Petitioner

(Appendix Follows)

[redacted]

Appendix

The United States District Court
Northern District Of California

Before: Hon. Robert H. Schnacke, Judge

No. C-70 538 RHS

Granville C. Matise,
Plaintiff,

vs.

American Foreign Steamship Corporation, et al.,
Defendants.

REPORTER'S PARTIAL TRANSCRIPT
December 10, 1971

Appearances:
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San Francisco 94104

For Defendants:
Graham & James
Attorneys at Law
By: John A. Flynn, Esquire
310 Sansome Street
San Francisco 94104

December 10, 1971

THE COURT: All right, gentlemen. I thank you for your argument.

None of the cases cited by the plaintiff seem to be precisely the case that we have here, and none of them caused me to change my view on the state of the law.

It is perfectly plain that in any disputed matter, as between the shipowner or the master of the ship and the seaman, the master clearly may not resolve the dispute in his own favor by taking a deduction that is in any way subject to review or consideration. But that doesn't mean that a seaman is totally incapable of directing the application of his own funds, and from the evidence that's before me I must find that that is what happened in this case: that the seaman here, who was at all times significant herein, a member of the vessel AMERICAN HAWK, was a citizen of the United States, signed on at Long Beach January 10, 1969, and who was discharged for willful misconduct and neglect of duty in Saigon on March 19, 1969, was properly discharged for good and lawful cause.

From the evidence it's undisputed that the obligation to repatriate the plaintiff was not upon the shipowner, but was rather the personal responsibility of the seaman.

By reason of regulations of the Army and the government of South Vietnam at the time of the discharge, it was impossible to permit the transfer of money to the seaman to permit him to go ashore to buy his own ticket. The currency regulations of South Vietnam had required the sealing of the safe of the AMERICAN HAWK; and under the circumstances in Saigon at the time, airline tickets could be purchased only with United States currency.

The plaintiff consented to and approved the purchase of an airline ticket for his purposes with his money under circumstances that were arranged by the master

and the vice consul with the special permission of the South Vietnamese customs officials. The purchase of that ticket under those circumstances constituted the equivalent of payment of monies over to the seaman.

The release that he later signed in signing off the articles and in accepting the pay voucher and in the later release, which is Exhibit G, don't constitute a waiver of claim in any fashion, and they weren't received in evidence for that purpose, but they do indicate that this was not and never has been a disputed item in any way. They are evidence of the consent and approval of the plaintiff of the payment to him in this fashion. Accordingly, his having been paid everything that he was entitled to be paid obviously precludes his being successful in an action of this sort.

So it is the conclusion of the Court that this Court has jurisdiction under the General Maritime Law; the plaintiff was lawfully and properly discharged for cause by reason of his own willful misconduct and neglect of duty; that there was no unlawful withholding by the defendant of the sum of $510.00 or any other amount; and that since there was no unlawful withholding or illegal deduction from plaintiff's earned wages, there are no grounds for recovery of the double-wage penalty.

Accordingly, the defendant is entitled to judgment in this action with costs.

The transcription of my remarks here will constitute the Court's findings of fact and conclusions of law for all purposes of the case.

United States Court of Appeals
Ninth Circuit

No. 72-1345

Lillian M. Matise, as personal representative of Granville C. Matise, Deceased, Appellant

vs.

American Foreign Steamship Co., Appellee

March 8, 1974

As Amended on Denial of Rehearing

April 4, 1974

Before MERRILL and ELY, Circuit Judges, and EAST,* District Judge.

OPINION

ELY, Circuit Judge:

This appeal arises from a suit brought by Granville C. Matise,[1] a seaman, against American Foreign Steamship Corporation, in which Matise alleged that $510.00 of his earned wages had been unlawfully withheld from him. He sought the recovery of these wages and claimed

*Honorable William G. East, Senior United States District Judge, District of Oregon, sitting by designation.

[1]Matise died during the pendency of his suit. The State of Maryland appointed Lillian M. Matise as his Personal Representative, and, pursuant to stipulation, the District Court substituted her as the plaintiff in the action.

the dougle wage penalty allowed to seamen for wages withheld without sufficient cause.[2] The District Court, in a trial without jury, found that there was no unlawful withholding and entered judgment for the shipowner. We reverse.

Briefly, the facts of the case are these: Matise signed articles of employment as an oiler for a foreign voyage aboard the S.S. American Hawk, appellee's vessel, on January 11, 1969 in Long Beach, California. He was discharged for good cause on March 19, 1969 in Saigon, South Vietnam, in the presence of the ship's captain, the United States Vice Consul, and two United States Coast Guard officials. The captain was advised by the Vice Consul and Coast Guard officials that the shipowner did not have a duty to pay the cost of transportation to repatriate Matise, since his discharge was for good cause. These officials were not acting within their official authority in so advising the ship's captain. The shipowner was obliged by treaty and by the laws of the government of South Vietnam to remove all persons brought to South Vietnam by the ship. At that time, however, South Vietnam prohibited American seamen from carrying United States currency ashore and required that

[2]46 U.S.C. § 596 reads, in pertinent part:

"The master or owner of any vessel [making foreign voyages] . . . shall pay to every seaman his wages . . . within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court. . . ."

the ship's safe containing currency be sealed. Thus, Matise could not simply be paid the wages that were due him and put ashore. Furthermore, an airline ticket for transportation to the United States from Saigon could only be purchased with United States currency. With the approval of the Vice Consul, the ship's captain was granted permission by South Vietnamese Customs to break the seal on the vessel's safe and withdraw the amount necessary to purchase an airline ticket to the United States, $510.00. The ship's captain then purchased, or arranged for his agent to purchase, the ticket, which was given to Matise. In the presence of the Vice Consul, the two Coast Guard officials, and the ship's captain, Matise was given a Wage Voucher signed by the captain in the amount of $118.45. The cost of the airline ticket had been deducted from the full amount of wages due Matise, and $118.45 was the remainder. While there is some dispute as to whether or not the seaman signed the Wage Voucher while in Saigon, the Voucher indicates on its face that it was signed by Matise in San Francisco. After arriving in the United States, Matise was signed off the ship's articles by the U.S. Shipping Commissioner in San Francisco. The Commissioner required Matise to sign a release as a condition to the latter's receiving any part of his wages. Matise took the release and the Wage Voucher as prepared by the captain to the shipowner, which in turn required Matise to sign the Voucher in order to receive any of his wages. On these facts, the District Court found that the $510.00 used to purchase the airline ticket to repatriate Matise was a partial payment of wages and that there was therefore no unlawful withholding.

Here, the questions are: (1) Was there an unlawful withholding of Matise's wages? (2) If so, was the unlawful withholding without sufficient cause?

As a general principle of maritime law, when a seaman is discharged for good cause in a foreign port, the seaman's misconduct is, in effect, a breach of the seaman's contract with the ship and terminates the shipowner's obligation to bring the seaman home. Norris, The Law of Seamen (3rd Ed.) Vol. 1, Section 420 (1970); Ward v. United States, 66 F.Supp. 237 (D.C. 1946). Furthermore, by statute, the wages of a seaman on a foreign voyage become due and payable within twenty-four hours after the cargo has been discharged or within four days after the seaman has been discharged, whichever first occurs. 46 U.S.C. §596. Failure to pay the seaman within the statutory time limit, without sufficient cause, subjects the shipowner to double wage penalties. 46 U.S.C. §596.

The appellee argues that since maritime common law only requires a shipowner to pay wages to a seaman discharged for cause, the ship's captain effectively paid Matise part of his wages by buying him a ticket home. The appellee's argument cannot stand in view of the far-reaching protection of seamen's wages which is now provided by statute. As the Supreme Court said in Isbrandtsen v. Johnson, 343 U.S. 779, 784, 72 S.Ct. 1011, 1015, 96 L.Ed. 1294 (1952):

"Congressional legislation now touches nearly every phase of a seaman's life . . . . It deals specifically with his shipping articles and the payment to him of his wages . . . . It insures the payment to him of the balance of [his] wages upon completion of his voyage or shortly

after discharge. It deals explicitly with the final payment of wages."

The shipowner in this case did not pay part of Matise's final wages in Saigon, as it argues, since the $510.00 was not paid to Matise but to an airline. Although the appellee contends that the transportation money spent on Matise's alleged behalf is equivalent to the payment of wages to Matise, the applicable statutes explicitly and unequivocally provide that the wages due are to be paid *to the seaman,* 46 U.S.C. §§ 596-597. Furthermore, the shipowner here was acting to some extent in its own behalf, in view of its legal obligation to remove all persons, including a discharged seaman such as Matise, whom it had transported to South Vietnam. Even, however, had the money been spent entirely for the benefit of Matise, it could not be treated as a partial payment of his wages and thereby deducted from the total amount of wages that he had earned and to which he was entitled. In Gonzales v. Isthmian Steamship Co., 1958 A.M.C. 97 (E.D.Pa. 1957), the shipowner paid for a lawyer and incurred related expenses for the benefit of a seaman held in jail on charges of assault. Although the seaman had signed an agreement with the ship allowing the expenditures to be paid as an advance on his wages, the District Court refused to allow the shipowner to deduct the amount of the expenses from the seaman's wages. The Court said: ". . . except as expressly provided by law, a seaman cannot give up any right to wages, or any remedy for the recovery of wages, even by agreement." 1958 A.M.C. at 105. In so writing, the court followed the rule of Isbrandtsen v. Johnson, *supra,* which

held that only those specific deductions and set-offs designated by statute could be withheld from a seaman's wages. In *Isbrandtson* the Supreme Court held that regardless of the validity of the shipowner's claim against the seaman, the shipowner may not withhold the seaman's wages to satisfy those claims. The Supreme Court wrote:

"Congress has gone so far in expressly listing such deductions and set-offs that it is a fair inference that those not listed may not be made. It thus remains for the courts to determine only what are the deductions or set-offs for derelictions of duty that are listed by Congress, rather than to determine which of the deductions or set-offs once known to the general maritime law Congress has failed to exclude. Congress, in effect, has excluded all of them except those which it has listed affirmatively." 343 U.S. at 789, 72 S.Ct. at 1017.

The statutory scheme enacted by Congress does not provide for set-offs or deductions for return transportation expenses, and *Isbrandtsen* has been applied to bar the deduction of repatriation costs from a seaman's wages. In Schwark v. S.S. Rio Macareo, 249 F.Supp. 375 (E.D. La. 1966), a seaman was discharged for good cause in a foreign port, just as was Matise in our case. An agreement in the articles of the ship provided that the ship was not obligated to pay the cost of repatriating any crewmember discharged for cause. Nevertheless, the court held that as a matter of law, the ship could not offset the cost of repatriating the seaman against his wages, even though the court found that the ship had a valid claim against the seaman for that amount. *See also* Swain

v. Isthmian Lines, Inc., 360 F.2d 81 (3d Cir. 1966), wherein the shipowner was required to restore wages and pay a double wage penalty for withholding from a seaman's wages the cost of medical treatment paid by the ship, a cost for which the seaman was admittedly liable; Keen v. United States, 199 F.2d 151 (2d Cir. 1952), wherein a shipowner who had deducted from a seaman's wages the cost of medical treatments and transportation to the United States was assessed double penalty wages; Shilman v. United States of America Shipping Administration, 164 F.2d 649 (2d Cir. 1947), cert. denied, 333 U.S. 837, 68 S.Ct. 608, 92 L.Ed. 1122 (1948), wherein the Second Circuit held that a seaman discharged in a foreign port is entitled to receive all his earned wages, without any deductions whatsoever except those specifically authorized by statute; Ventiadis v. C. J. Thibodeaux & Co., 295 F.Supp. 135 (S.D.Tex. 1968), wherein it was held that although a seaman had signed a release, left the ship at his own request, and was flown at company expense to his home port in Greece, he was nevertheless entitled to double penalty wages for the repatriation costs deducted from his wages.

The foregoing authorities make it clear that the shipowner, in deducting transportation costs from Matise's wages, unlawfully withheld those wages within the meaning of 46 U.S.C. § 596. Furthermore, the case law has, for at least two decades, provided full notice to shipowners seeking to avoid the imposition of double wage penalties that only those deductions from wages that are allowed by statute are lawful. As the court remarked in Swain v. Isthmian Lines, Inc., *supra:*

"It has been eminently clear in the law, at the very least since the Supreme Court case of Isbrandtsen Co. v. Johnson in 1952 that a deduction from wages for medical expenses such as were incurred by appellee in the instant case is wrongful as falling outside the proper deductible instances . . . . This question, therefore has been closed for some time." 360 F.2d, at 83 (footnote omitted).

It is therefore clear that the shipowner in our case cannot claim that it had "sufficient cause" to withhold a portion of Matise's wages because of reliance on the general maritime law which did not require a shipowner to pay the cost of repatriating a seaman discharged for good cause. As we have previously indicated, this argument has been without merit since the Supreme Court decided Isbrandtsen v. Johnson, *supra,* over twenty years ago.

The only remaining question is whether the shipowner can avoid double wage penalties because Matise signed the Wage Voucher and mutual release before the shipping commissioner. Where, as here, a seaman has been compelled to sign a release and Wage Voucher in order to receive wages which the shipowner admits are due, the release has been set aside by the courts as having been executed under duress. In Prindes v. S.S. African Pilgrim, 266 F.2d 125 (4th Cir. 1959), a seaman was logged two days' pay for failing to return to his ship one hour before the posted sailing time as his contract required. At the termination of the voyage the seaman was offered his earned wages minus the logged pay, but before he could receive *any payment* he was required by

the ship to sign a Wage Voucher and a mutual release. The court, in holding that the Wage Voucher and release were invalid, declared: "It is well settled that a seaman is entitled to double wages or 'waiting time' under 46 U.S.C.A. § 596, if wages concededly due are tendered only upon condition that he will release disputed claims." 266 F.2d at 127. And in Isthmian Lines, Inc. v. Haire, 334 F.2d 521 (5th Cir. 1964), the shipowner contended that the seaman's right to maintenance and cure monies was foreclosed because of a mutual release that the seaman had executed before the shipping commissioner when his earned wages were paid. The Fifth Circuit, in affirming the District Court's judgment in favor of the seaman emphasized:

"The Shipping Commissioner is no roving arbiter of all of the disputes between ship and seaman. He is given no power to resolve unliquidated demands for cure, for maintenance . . . . Moreover, as a principle of ordinary law—land-locked, seagoing, or amphibious—a release for payments for amounts admittedly due lacks consideration." 334 F.2d at 523. *See* 46 U.S.C. § 597, which provides that any court having jurisdiction may on good cause shown set aside a release signed before a shipping commissioner and take such action as justice may require. *See also* Garrett v. Moore-McCormack Co., 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 239 (1942), and Pacific Mail S.S. Co. v. Lucas, 258 U.S. 266, 42 S.Ct. 308, 66 L.Ed. 614 (1922).

Matise was misinformed in Saigon by the Vice-Consul, the two Coast Guard officers, and his captain by their representations to him that he could "be forced to spend

his own money to send him back home." Furthermore, he was compelled to sign the release and Wage Voucher in order to receive the remainder of his wages that admittedly were due. In these circumstances, we hold that neither the Wage Voucher nor the release can in any manner be treated as a waiver by Matise of his claim or a factor tending to show that the shipowner had "sufficient cause" to withhold a part of Matise's wages.

Reversed.

United States Court of Appeals
For The Ninth Circuit

No. 72-1345

Lillian M. Matise, as personal representative of Granville C. Matise, deceased,
Appellant,
vs.
American Foreign Steamship Co.,
Appellee.

[Filed April 4, 1974]

On Petition For Rehearing

ORDER

Before: MERRILL and ELY, Circuit Judges, and EAST, District Judge.*

The court amends its opinion in the subject cause by deleting the last sentence of the first incomplete paragraph on page 3 of the slip opinion dated March 8, 1974. The sentence, now deleted, read: "The District Court further found that even had there been an unlawful withholding, it was not without sufficient cause within the meaning of 46 U.S.C. § 596." The court's opinion having been amended as above specified, the Petition for Rehearing is DENIED.

*Honorable William G. East, Senior United States District Judge, District of Oregon, sitting by designation.

In The United States District Court
For The Northern District Of California

No. C-70 538 RHS

Lillian M. Matise, as personal representative of Granville C. Matise, deceased,
Plaintiff,
vs.
American Foreign Steamship Company, et al.,
Defendants.

[Filed June 13, 1974]

JUDGMENT ON MANDATE

Lillian M. Matise, as personal representative of Granville C. Matise, deceased, having appealed to the United States Court of Appeals for the Ninth Circuit from the judgment entered in this cause on the 15th day of December, 1971, and said Court having issued its Mandate dated the 9th day of April, 1974, wherein it was ordered, adjudged and decreed that such judgment be reversed, with costs assessed at $94.65 in favor of appellant;

Now upon the Mandate of the United States Court of Appeals for the Ninth Circuit, dated the 9th day of April, 1974,

It is Ordered, Adjudged and Decreed that the judgment of this Court entered December 15, 1971, be, and the same is hereby vacated and set aside; that the cause be restored to the docket for further proceedings in ac-

cordance with such Mandate; and that, pursuant to said Mandate, judgment be entered that Lillian M. Matise, as personal representative of Granville C. Matise, deceased, have and recover from American Foreign Steamship Corporation the following sums:

1. $510.00 as wages wrongfully withheld, with interest thereon at seven percent (7%) from March 24, 1969 to December 15, 1971, amounting to $95.62, for a total sum of $605.62;

2. $29,462.00 as penalty wages for the wrongful withholding of earned wages from March 24, 1969 to December 15, 1971, with interest thereon at seven percent (7%) from December 15, 1971, to June 7, 1974, amounting to $5,106.00;

3. $94.65 as costs on appeal;

4. $37.00 as costs in this Court.

Dated: June 13, 1974.

Robert H. Schnacke
Judge of the United States District Court

United States Court of Appeals
for the Ninth Circuit

No. 74-2721

Lillian M. Matise, as personal representative of Granville C. Matise, deceased,
Plaintiff-Appellee,
vs.
American Foreign Steamship Company, et al.,
Defendant-Appellant.

[Filed Sept. 27, 1974]

ORDER

Before: DUNIWAY and ELY, Circuit Judges

The appellee has presented herein two motions, (1) to expedite the appeal, (2) to require the appellant to post an adequate supersedeas bond. The only issue presented by the appeal is apparently whether the District Court complied with this court's judgment in *Matise v. American Foreign Steamship Co.*, ___ F.2d ___ (9th Cir. Mar. 8, 1974). The court is familiar with the record and has examined the District Court's judgment of June 13, 1974, the judgment challenged in the present appeal.

That judgment, in the court's opinion, conforms with the intention of this court, as expressed in its opinion of March 8, 1974. The subject appeal is therefore dismissed as frivolous.

United States Court of Appeals
for the Ninth Circuit

No. 74-2721

Lillian M. Matise, as personal representative of Granville C. Matise, deceased,
Appellee,

vs.

American Foreign Steamship Company, et al.,
Appellant.

[Filed Nov. 7, 1974]

ORDER

Before: DUNIWAY and ELY, Circuit Judges.

The motions panel concerned with the subject case (Duniway and Ely) has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

United States Court of Appeals,
Ninth Circuit

Nos. 72-2944, 72-2995.

Arnold Escobar,
Plaintiff-Appellant,

vs.

The SS Washington Trader, her engines, tackle, apparel, etc., et al.,
Defendant-Appellee.

Arnold Escobar,
Plaintiff-Appellee,

vs.

The SS Washington Trader, her engines, tackle, apparel, etc., et al.,
Defendant-Appellant.

June 5, 1974.

Before CHAMBERS and TRASK, Circuit Judges, and SHARP,* District Judge.

PER CURIAM:

Seaman Arnold Escobar and the SS Washington Trader et al. (Shipowner) cross appeal from a judgment which awarded Escobar limited double wage recovery pursuant to 46 U.S.C. § 596,[1] but ruled in favor of the Shipowner

*Honorable Morell E. Sharp, United States District Judge from the Western District of Washington, sitting by designation.

[1]46 U.S.C. § 596 reads, in pertinent part:
"The master or owner of any vessel [making foreign voyages] . . . shall pay to every seaman his wages . . . within

on its counterclaim for repatriation and medical costs paid by it on behalf of the seaman. In light of this court's recent holding in Matise v. American Foreign Steamship Co., 488 F.2d 469 (9th Cir., 1974), we reverse in part and remand for a recomputation of the double wage penalty.

The facts relevant to this appeal are as follows: On March 5, 1969, Escobar was discharged as a wiper aboard the SS Washington Trader and ordered removed from the vessel following an incident which occurred while the ship was tied up at Subic Bay, Philippine Islands. While descending the gangplank under police escort, Escobar fell and suffered a minor back injury. He was taken to a local United States naval hospital and remained there for treatment until March 10, 1969. Upon discharge from the hospital, Escobar was taken to Manila where he formally demanded his wages from an agent of the Shipowner. The agent initiated radio contacts between the company's New York office and the SS Washington Trader (which was then out at sea) but no payment was made. Meanwhile, Escobar encountered difficulties with Philippine immigration officials because of his alien status and was taken into custody. Upon the intercession of the United States consul in Manila, the Shipowner agreed to pay Escobar's air fare to San Francisco and Philippine expenses if Escobar signed a guarantee to reimburse the Shipowner for

twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens . . . . Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court . . . ."

all the repatriation costs. Escobar signed the agent's "Acknowledgement Certificate" to that effect and was flown to San Francisco on March 13, 1969. He was not, however, paid until April 4, 1969, and from his final wages of $888.04 the Shipowner deducted $536.72 representing repatriation costs. Escobar brought suit against the Shipowner in June 1970 challenging the legality of the wage deduction and asserting other claims arising out of the discharge not relevant to this appeal. On September 14, 1970, the Shipowner, upon the advice of counsel, tendered a cash payment of the disputed $536.72 to Escobar while expressly reserving its rights to the contested sum.

The District Court found that Escobar was discharged for good cause and the Shipowner was not responsible for Escobar's hospitalization and repatriation expenses following discharge. The court characterized the Shipowner's payment of repatriation expenses as a payment of wages "in kind" and concluded that the $536.72 wage deduction made on April 4, 1969, was proper. Escobar was accordingly ordered to refund the $536.72 he subsequently received in cash and to pay an additional $245 to the Shipowner representing unreimbursed medical expenses. However, the court also found that the Shipowner's delay in paying Escobar's wages was "without sufficient cause" and therefore subject to a 21-day wage penalty pursuant to section 596.[2] Both parties appeal from the above judgment.

[2]Without any explanation, the District Court found that the Shipowner had sufficient cause for nonpayment of wages during Escobar's hospitalization period from March 5, 1969 to March 10, 1969. The court accordingly assessed double wage penalties beginning on March 14, 1969, (four days after Escobar's discharge from the naval hospital) and running through April 4, 1969.

Preliminarily, we affirm the District Court's finding that the Shipowner was entitled to reimbursement for the repatriation and medical expenses it incurred on Escobar's behalf following the seaman's discharge for cause. However, this determination does not affect the central issue on this appeal: namely, the legality and consequences of the Shipowner's deduction of these costs from Escobar's wages. Congress has extensively regulated the types of deductions and set-offs which may be made from a seaman's wages, and the shipowner's mere right to recovery from the seaman will not legalize a deduction that is not recognized by the statutory scheme. Isbrandtsen v. Johnson, 343 U.S. 779, 72 S.Ct. 1011, 96 L.Ed. 1294 (1952). It is therefore necessary to determine whether the Shipowner's deduction of repatriation costs was proper here, and if not, whether the withholding of that portion of the seaman's wages is subject to a section 596 penalty. We believe that the answer to both these questions is circumscribed by Matise v. American Foreign Steamship Co., 488 F.2d 469, (9th Cir., 1974). In that case the plaintiff seaman, as here, was discharged for cause in a foreign port. The shipowner purchased an air ticket for the seaman, deducted the fare from the seaman's wages and tendered a voucher for the remainder of the wages. In order to actually collect the wages in San Francisco, the seaman was required to sign a written release. In finding that the air fare deduction constituted an unlawful withholding of Matise's wages, this court stated: "The statutory scheme enacted by Congress does not provide for set-offs or deductions for return transportation expenses, and Isbrandtsen has been applied to bar the deduction of repatriation costs from a seaman's wages." *Id.* at 472; *accord,* Schwark v. SS Rio Macareo, 249 F.Supp. 375 (E.D. La. 1966); *see also* Swain v. Isthmian Lines, Inc., 360 F.2d 81 (3d Cir. 1966); 1 Norris, Law of Seamen, § 355 (3d ed. 1970). Moreover, in *Matise* this court explicitly rejected the argument successfully advanced below that the shipowner's purchase of the plane ticket and assumption of expenses constituted a payment of wages "in kind":

> "Although the appellee contends that the transportation money spent on Matise's alleged behalf is the equivalent to the payment of wages to Matise, the applicable statutes explicitly and unequivocally provide that the wages due are to be paid to the seaman, 46 U.S.C. §§ 596-97. Furthermore, the shipowner here was acting to some extent in its own behalf, in view of its legal obligation to remove all persons, including a discharged seaman such as Matise, whom it had transported to South Vietnam. Even, however, had the money been spent entirely for the benefit of Matise, it could not be treated as a partial payment of his wages and thereby deducted from the total amount of wages that he had earned and to which he was entitled." 488 F.2d at 471.

We are therefore compelled to follow the above interpretation of 46 U.S.C. § 596 and *Isbrandtsen, supra,* and conclude that the deduction of repatriation costs from Escobar's wages was improper.

Turning next to the question of whether this deduction constituted a withholding of wages "without sufficient cause" under section 596, we are again bound by the reasoning of *Matise, supra.* The court there rejected the shipowner's arguments that uncertainty as to the legality of the deduction and reliance on the seaman's written

release each provided sufficient grounds to remove the withholding from the operation of the penalty statute. With regard to the former justification the court stated:

> ". . . [T]he case law has, for at least two decades, provided full notice to shipowners seeking to avoid the imposition of double wage penalties that only those deductions from wages that are allowed by statute are lawful. As the court remarked in Swain v. Isthmian Lines, Inc., *supra:* 'It has been eminently clear in the law, at the very least since the Supreme Court case of Isbrandtsen Co. v. Johnson in 1952 that a deduction from wages for medical expenses such as were incurred by appellee in the instant case is wrongful as falling outside the proper deductible instances . . . . This question, therefore has been closed for some time.' 360 F.2d at 83 (footnote omitted).
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> "It is therefore clear that the shipowner in our case cannot claim that it had 'sufficient cause' to withhold a portion of Matise's wages because of reliance on the general maritime law which did not require a shipowner to pay the cost of repatriating a seaman discharged for good cause. As we have previously indicated, that argument has been without merit since the Supreme Court decided Isbrandtsen v. Johnson, *supra,* over twenty years ago." 488 F.2d at 473.

Accord, 1 Norris, *supra* § 392. The court also found that because execution of the written release was an express precondition to receipt of wages, the seaman was economically compelled to sign the document. Under these circumstances the court concluded that the shipowner was not justified in relying upon the release it coerced as a "sufficient cause" for withholding Matise's wages. Although the "Acknowledgement Certificate" signed by Escobar was

not explicitly a precondition to the payment of wages, we do not feel that this technical difference justifies a conclusion contrary to *Matise.* In the instant case the Shipowner demanded the guarantee from Escobar during the period in which it was unlawfully withholding the seaman's wages. Moreover, this withholding left Escobar, an illegal alien, stranded in the Philippines without funds. In short, these were the very circumstances which prompted Congressional enactment of much of the protective legislation for seamen and section 596 in particular. *See e. g.,* Ladzinski v. Sperling and Trading Corp., 300 F.Supp. 947, 954-955 (S.D.N.Y.1969).

We conclude therefore that the Shipowner improperly deducted repatriation costs from Escobar's wages and that this action constituted an unlawful withholding subject to the section 596 double wage penalty. The only remaining issue is the designation of the penalty period itself. Despite our concern for a possibly inequitable windfall recovery to the seaman, we agree with the Third Circuit that the language of section 596 is unequivocal and mandatory. Swain v. Isthmian Lines, Inc., 360 F.2d 81, 84-88, (3d Cir. 1966).[3]

We accordingly reverse in part and remand for further consideration in the light of this opinion.

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[3]The contrary view would assess the amount of section 596 penalty by considering "the equities of a particular case." Prindes v. SS African Pilgrim, 266 F.2d 125, 128 (4th Cir. 1959). *See also,* Southern Cross SS Co. v. Firipis, 285 F.2d 651 (4th Cir. 1960), cert. denied, 365 U.S. 869, 81 S.Ct. 903, 5 L.Ed.2d 859; Kontos v. SS Sophie, 236 F.Supp. 664 (D.C.Pa.1964). We find no support for a discretionary assessment of the double wage penalty in the present language of section 596 and find the reasoning in Swain, *supra,* persuasive.

CHAMBERS, Circuit Judge (concurring):

While I concur in the foregoing, the result is horrible. I am not concerned with the policy of double wage recovery generally. But the statute in this type of case results in a taking which is unconscionable. The Congress should do something about it.